Sarah Sayeed Majangah (t/a sole proprietor under the name and styles of Sayfol International School) & Anor v Lembaga Getah Malaysia & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCVC)(W)-1991–11 OF 2014
LIM YEE LAN, HAMID SULTAN AND NALLINI PATHMANATHAN, JJCA
14 JANUARY 2016

Contract — Specific performance — Concluded contract — Respondents offered appellants to lease property — Respondent forwarded draft lease agreement to appellant — Appellant sent letter of acceptance — Respondents refused to execute agreement — Whether there was concluded agreement for grant of 30 year lease to appellant

The first respondent was the registered proprietor of Lots 261 and 260. The first respondent had offered to lease Lot 261 to the first appellant for a period of 30 years pursuant to a draft lease agreement ('the draft') of the said property. The draft was forwarded to the appellants on or about 4 April 2012. The draft was as culmination of various previous negotiations held between the parties. Subsequently, there was an exchange of correspondence between the parties to deal with an issue relating to acquisition of the property by state authorities and the manner in which compensation was to be agreed. This was a non-essential term and the appellant took the liberty to waive such term for the conclusion of the contract and sent a letter of acceptance of the lease agreement by letter dated 4 April 2013. The first respondent had also offered to lease Lot 260 to the first appellant and there were some negotiations in respect of the said property between the parties. However, at no point of time had the first respondent withdrawn the offer for Lot 261 or had informed the first appellant that (a) the approval of the first respondent was necessary; (b) the approval of the Ministry of Finance was necessary; (c) the first respondent board had rejected the 30 years lease. Due to the failure of the respondents to honour the lease agreement, the appellants had brought an action for specific performance of the said lease agreement against the respondent. At the end of the proceedings, the trial court had dismissed the application. Hence, this appeal. The issue for determination was whether there was a concluded agreement for the grant of a 30 year lease to the appellant.

Held, allowing the appeal with costs of RM15,000:

(1) Based on the chronology of events and the contemporaneous documentary and oral evidence, there was in law and fact a valid and

enforceable lease agreement for Lot 261 and the contract prima facie was concluded by the first respondent in the letter dated 10 September 2012 (see para 16(i)).

(2) This was not a simple case of offer and acceptance as submitted by learned counsel for the first respondent. It had moved to an advanced stage fit for execution. The parties had reached consensus ad idem well before 4 April 2013 (see para 16(ii)).

(3) Since there was a valid and enforceable lease agreement and the acceptance thereof, the unilateral act of the first respondent seeking to withdraw from the lease agreement amounted to a breach of its obligations. Thus, it was a fit and proper case for the court to order specific performance of the lease agreement (see para 16(iii) & (iv)).

[Bahasa Malaysia summary

Responden pertama adalah pemilik berdaftar Lot 261 dan 260. Responden pertama telah menawarkan untuk memajakkan Lot 261 kepada perayu pertama bagi tempoh selama 30 tahun berikutan draf perjanjian pajakan ('draf tersebut') terhadap hartanah tersebut. Draf tersebut diberikan kepada perayu-perayu pada atau kira-kira pada 4 April 2012. Draf tersebut adalah kemuncak pelbagai perundingan terdahulu yang diadakan di antara pihak-pihak. Kemudiannya, terdapat pertukaran surat-menyurat di antara pihak-pihak untuk berurusan dengan isu berkaitan pengambilan hartanah tersebut oleh pihak berkuasa negeri dan cara di mana pampasan dipersetujui. Ini adalah terma yang tidak penting dan perayu mengambil kesempatan untuk mengetepikan terma sedemikian bagi kesimpulan kontrak dan menghantar surat penerimaan perjanjian pajakan tersebut melalui surat yang bertarikh 4 April 2013. Responden pertama juga menawarkan untuk memajakkan Lot 260 kepada perayu pertama dan terdapat beberapa perundingan berkaitan hartanah tersebut di antara kedua-dua pihak. Walau bagaimanapun, responden pertama tidak menarik balik tawaran untuk Lot 261 atau memberitahu perayu pertama bahawa (a) kelulusan daripada responden pertama adalah perlu; (b) kelulusan daripada Kementerian Kewangan adalah perlu; (c) Lembaga responden pertama telah menolak pajakan 30 tahun tersebut. Akibat kegagalan responden-responden untuk menghormati perjanjian pajakan tersebut, perayu-perayu telah membangkitkan tindakan bagi pelaksanaan spesifik perjanjian pajakan tersebut terhadap responden. Di akhir prosiding, mahkamah perbicaraan telah menolak permohonan tersebut. Maka rayuan ini. Isu untuk penentuan adalah sama ada terdapat perjanjian muktamad bagi pemberian pajakan 30 tahun kepada perayu.

Diputuskan, membenarkan rayuan dengan kos sebanyak RM15,000:

(1) Berdasarkan kronologi keadaan dan dokumentari semasa dan keterangan lisan, terdapat dari segi undang-undang dan fakta perjanjian pajakan

yang sah dan boleh dikuatkuasa bagi Lot 261 dan prima facie kontrak telah disimpulkan oleh responden pertama di dalam surat bertarikh 10 September 2012 (lihat perenggan 16(i)).

(2) Ini bukan kes tawaran dan penerimaan biasa seperti yang dihujahkan oleh peguam bijaksana bagi responden pertama. Ia telah bergerak kepada peringkat kemajuan yang sesuai untuk pelaksanaan. Pihak-pihak telah mencapai *consensus ad idem* sebelum 4 April 2013 (lihat perenggan 16(ii)).

(3) Memandangkan terdapat perjanjian pajakan yang sah dan boleh dikuatkuasa, tindakan *unilateral* responden pertama dalam memohon untuk menarik diri daripada perjanjian pajakan merupakan kemungkiran tanggungjawabnya. Oleh itu, ia adalah kes yang sesuai dan betul bagi mahkamah untuk memerintahkan pelaksanaan spesifik perjanjian pajakan (lihat perenggan 16(iii) & (iv)).]

Notes

For a case on concluded contract, see 3(4) *Mallal's Digest* (5th Ed, 2015) para 6928.

Cases referred to

Charles Grenier Sdn Bhd v Lau Wing Hong [1996] 3 MLJ 327, FC (refd)
Deutsche Bank (M) Bhd v MBf Holdings Bhd & Anor [2015] 6 MLJ 310, FC (refd)
Hillas & Co Ltd v Arcos Ltd [1932] All ER Rep 494, HL (refd)
Pinsia Development Sdn Bhd & Ors v Hj Abdul Hadi bin Ahmad & Ors [2005] 2 MLJ 32, CA (refd)
Rojasara Ramjibhai Dahyabhai v Jani Narottamdas Lallubhai [1986] 3 SCC 300, SC (refd)
Sejati Education Sdn Bhd v S3M Development (Sabah) Sdn Bhd [2016] 2 MLJ 98, CA (refd)

Appeal from: Civil Suit No 22NCVC-36–01 of 2014 (High Court, Kuala Lumpur)

Gopal Sri Ram (RK Sharma Amrit Pal Singh, CK Lim, Adam Alexius Kiob and David Yii with him) (Vicknaraj, RD Ratnam, Rajesh Kumar & Assoc) for the appellants.
Nad Segaram (Soo Siew Mei with him) (Shearn Delamore & Co) for the respondent.

Hamid Sultan JCA:

[1] The appellants'/plaintiffs' appeal against the refusal of the learned High Court judge to grant specific performance of a lease agreement against the first

respondent/first defendant came up for hearing on 28 October 2015, and upon hearing the appeal we allowed the same.

[2] My learned sisters Lim Yee Lan JCA and Nallini Pathmanathan JCA have read this judgment and approved the same. This is our judgment.

[3] The memorandum of appeal reads as follows:

1. The Learned High Court Judge erred in law and in fact in failing to consider that a 30 year lease agreement of Lot 261 had been concluded despite overwhelming evidence demonstrating the same.

2. The Learned High Court Judge erred in law and in fact in failing to take into consideration or adequately consider that there was no evidence that the Appellants had been informed that the 30 years lease of Lot 261 was subject to the approval of the 1st Respondent s Board of Directors and further the approval of the Ministry of Finance ('the Approvals') until after all the terms in the 30 years lease agreement of Lot 261 had been concluded and finalised.

3. The Learned High Court Judge erred in law and in fact in failing to direct herself to take into account the evidence of cross-examination on DW-4, Rosalind Josephine Lim Poh Choo, the Respondents' solicitor who admitted that there was no such clause with regard to the Approvals in the 30 years lease agreement of Lot 261 until all terms of the 30 years lease agreement were concluded and finalised.

4. The Learned High Court Judge erred in law and in fact in finding that there was no contract with regard to the 30 years lease of Lot 261 as there was no acceptance by the Respondents despite evidence showing that there were numerous negotiations between the Appellants and the Respondents that led to the drawing up of the draft lease agreement of Lot 261 until the finalization and conclusion of the 30 years lease agreement of Lot 261.

5. The Learned High Court Judge erred in law and in fact in failing to consider or adequately consider that there was an open contract as all salient terms of the 30 years lease agreement of Lot 261 had been agreed upon of which are as follows:

   (a) The parties to the lease agreement are Lembaga Getah Malaysia, the 1st Respondent and Sayfol International Education Group Berhad, the 2nd Appellant;

   (b) The property of the 30 years lease agreement is Lot 261 which consists of Geran 13120, Lot No. 858, Geran 13119, Lot No. 859 and Geran 13118, Lot No. 860 at Mukim Ampang, Federal Territory of Kuala Lumpur and has the address of No. 261, Jalan Ampang, 50450 Kuala Lumpur;

   (c) The rental amount of the property was stipulated in schedule B of the 30 years lease agreement of Lot 261; and

   (d) The tenure of the lease Agreement is 30 years which can also be

found at schedule B of the 30 years lease agreement of Lot 261. A

6. The Learned High Court Judge erred in law and in fact in finding that evidence that the Respondents had agreed to enter into a 30 years lease of Lot 261 were only derived from the Appellants' first witness, PW-1, Datuk Seri Panglima Dr Haji Ghulam M Sayeed when it was clear that the particulars of the tenure of the lease and the rental amount was provided by the 1st Respondent to their solicitors, Messrs Mazlan & Associates to be incorporated in the draft 30 years lease agreement of Lot 261 as Schedule B in which subsequently all terms of the 30 years lease agreement of Lot 261 was finalized and concluded and only pending formal execution between both parties. B C

7. The Learned High Court Judge erred in law and in fact in failing to take into consideration the evidence of PW-1, Datuk Seri Panglima Dr Haji Ghulam M Sayeed and the documentary evidence that a 30 years lease agreement had been concluded between both parties. D

8. The Learned High Court Judge erred in law and in fact in failing to consider or adequately consider that there was no reply nor rebuttal by the Respondents to the Appellants letter dated 23.11.2011 when the 1st Appellant through PW-1, Datuk Seri Panglima Dr Haji Ghulam M Sayeed had reiterated and confirmed with the 1st Respondent about the terms of the 30 years lease of Lot 261. E

9. The Learned High Court Judge erred in law and in fact in finding that the preparations made by the Appellants such as the working papers, the letters in support and the incorporation of the 2nd Appellant was done unilaterally when it was clear that the same was fundamental steps taken by the Appellants in procuring the 30 years lease of Lot 261 from the 1st Respondent which led to the draft 30 years lease agreement of Lot 261 being drawn up. F

10. The Learned High Court Judge erred in law and in fact in failing to consider or adequately consider that other than the oral evidence of DW-5, YB Dato' Wira Hj Ahmad bin Hamzah and DW-7, Datuk Dr Salmiah binti Ahmad, which was rebutted, there was no evidence to support the Respondents' contention that the Appellants were notified and aware that the First Respondent s Board of Directors did not approve the 30 years lease of Lot 261. G

11. The Learned High Court Judge erred in law and in fact in concluding that there was no element of acceptance nor consent from the Respondents and in finding that there was no absolute or conclusive and unqualified acceptance from the Respondents pertaining to the 30 years lease of Lot 261 despite evidence showing that both parties had already finalised all of the terms of the 30 years lease agreement Lot 261 on 4.4.2014 and was only pending formal execution. H I

12. The Learned High Court Judge erred in law and in fact in finding that the lease for a period of 30 years pertaining to Lot 261 was a mere suggestion and further finding that the Appellants had insisted for the 1st Respondent to

enter into the 30 years lease agreement despite evidence showing that the Respondents themselves had appointed solicitors to finalise all of the terms of the 30 years lease agreement of Lot 261.

13. The Learned High Court Judge erred in law and in fact in finding that there was no *consensus ad idem* from both parties regarding the important and fundamental terms of the lease of Lot 261 when all of the salient terms were already agreed upon between the parties during the meeting held on 13.9.2011 which was further reiterated and confirmed in the 1st Appellant's letter dated 23.11.2011. The said letter was never replied nor challenged or objected to by the Respondents.

14. The Learned High Court Judge erred in law and in fact in admitting, taking into account and relying on the highly questionable extract of the minutes of the 1st Respondent's Board of Directors meeting held on 8.3.2011 ('the 8.3.2011 meeting') whereby the maker of the minutes was not called upon to give evidence during trial.

15. The Learned High Court Judge erred in law and in fact in making a finding based on the highly questionable extract of the minutes of the 8.3.2011 meeting that the Board of the 1st Respondent had rejected the 30 years lease of Lot 261 as early as 8.3.2011 of which was never conveyed to the Appellants.

16. The Learned High Court Judge erred in law and in fact in failing to find that the 8.3.2011 meeting was an internal meeting and the Appellants were never part of the meeting and further the Appellants were led on by the Respondents to further negotiate and finalise the terms of the 30 years lease agreement of Lot 261.

17. The Learned High Court Judge erred in law and in fact in failing to consider or adequately consider the oral evidence of DW-1, Basri bin Hamzah, DW-2, Edward Anthony Lajinga, DW-4, Rosalind Josephine Lim Poh Choo, DW-5, YB Dato' Wira Hj Ahmad bin Hamzah and DW-7, Datuk Dr Salmiah binti Ahmad that the term for the period of the lease agreement pertaining to Lot 261 was for the period of 30 years.

18. The Learned High Court Judge erred in law and in fact in finding that the offer to lease Lot 260 by the 1st Respondent to the Appellants was a counter offer which had rendered the offer to lease Lot 261 no longer effective.

19. The Learned High Court Judge erred in law and in fact in failing to find that the 1st Respondent's offer to lease Lot 260 was not a counter offer as it was a separate and isolated offer by the 1st Respondent after conclusion of all terms and pending formalisation only.

PRELIMINARIES AND JURISPRUDENCE

[4] At the start of the hearing, learned counsel for the appellant advised that there was only one issue which they proposed to canvas. Learned counsel framed the issue as follows:

... whether there is a concluded agreement for the grant of a 30 year lease to the appellant.

[5] It is important to note that in the instant case, the first respondent had forwarded to the appellant a draft lease agreement for Lot 261 for a period of 30 years. The draft agreement was as the culmination of various negotiations held between the parties. All the terms essential to formulate a valid and enforceable agreement were contained in the draft lease agreement. Subsequently, there was some negotiations which went on to include a non-essential term but the appellant took the liberty to waive the non-essential term for the conclusion of the contract and sent a letter of acceptance of the said lease agreement by letter dated 4 April 2013. The said letter reads as follows:

Your ref: EM/RL/C V/2012004136/kas

Our ref: AIN/C/7892/2012

4 April 2013

Messrs Mazlan & Associates

Advocates & Solicitors

Suite 8.1, Level 8, Work@Clearwater

Changkat Semantan

Off Jalan Semantan

Damansara Heights

50490 Kuala Lumpur

Attn: Ms. Rosalind Lim

Dear Sirs,

Draft Lease Agreement between Lembaga Getah Malaysia ('LGM') & Sayfol International School in relation ('Sayfol') in relation to Lot Nos. 857, *858, 859 & 860 known as No. 261, Jalan Ampang, Kuala Lumpur*

We refer to the above matter and to your clients letter dated 1.4.2013 addressed to our client and to our clients letter to your clients dated 11.3.2013.

We regret to note that the dateline stated in our clients letter (1.4.2013) for your client to put in place and finalise the terms of agreement for the alternate proposal for premises No. 260, Jalan Ampang (Lot 75) has lapsed.

In view of the same, our clients take it that your clients have abandoned and/or withdrawn the offer for the alternate lease for premises 260, Jalan Ampang as stated in their letter dated 1.3.2013.

Therefore, both parties as agreed will revert to the original agreement that has been finalized by both our clients and in this regard we refer to the following letters exchanged between our clients and between our firms namely, letters dated 11.1.2011, 12.1.2011, 12.4,2011, 19.4.2011, 30.5.2011, 9.9.2011, 23.11.2011, 25.6.2012, 11.7.2012, 17.7.2012, 10.9.2012, 9.10.2012, 18.12.2012, 29.1.2013 and 29.1.2013.

A It is clear from the above that parties have finalized and agreed to ALL the salient terms with the exception to Clause 19 in regard to Compulsory Acquisition.

For all intents and purpose the terms of the lease agreement for Lot Nos. 857, 858, 859 & 860 known as No. 261, Jalan Ampang, Kuala Lumpur has been finalized which is only pending formal execution between by our clients.

B For avoidance of doubt since you have failed to revert to our letters dated 18.12.2012 and 29.1.2013, we have been instructed by our client to state that they are agreeable to accept the terms proposed by your client in regards to clause 19. Therefore, kindly incorporate Clause 19 in the lease agreement and forward same for our clients execution immediately.

C In view of our clients agreement to clause 19 which is a minor term, it is now confirmed and agreed that parties have now concluded and agreed to all terms and conditions proposed by LGM, therefore kindly forward the fair copies of the lease agreement for our clients execution.

D We are instructed to reiterate the your client at all material time have confirmed and asserted their irrevocable intention to grant a long term lease to our client and clients are deeply grateful and appreciative of their said commitment and assurance.

Thank you.

Yours Faithfully,

E Sgd

c.c. Sayfol International School/Sayfol International Education Group Berhad.

Attn: Dato' Seri Dr Haji Ghulam Mohd Sayeed/Datin Seri Hajjah Sarah Sayeed Majangah.

F

[6] In our view, there was misdirection when Her Ladyship failed to appreciate and apply the well settled principles based on a long line of authorities which say that:

G (a) the law leans in favour of upholding bargains between the parties and not in striking them down;

(b) when it relates to sale and purchase agreement, lease agreement or tenancy agreements, etc. where the terms and condition relating to essential terms are standard in nature, the court will not permit a party H who had subscribed to the term to evade to conclude the agreement for circuitous reasons. The courts often forgive the technical shortcomings to conclude the agreement and this is often called leaning in favour to uphold the bargain. Support for the proposition is found in a number of cases (see (i) *Sejati Education Sdn Bhd v S3M Development (Sabah) Sdn* I *Bhd* [2016] 2 MLJ 98; (ii) *Pinsia Development Sdn Bhd & Ors v Hj Abdul Hadi bin Ahmad & Ors* [2005] 2 MLJ 32; (iii) *Hillas & Co Ltd v Arcos Ltd* [1932] All ER Rep 494; (iv) *Charles Grenier Sdn Bhd v Lau Wing Hong* [1996] 3 MLJ 327; and (v) *Rojasara Ramjibhai Dahyabhai v Jani Narottamdas Lallubhai* [1986] 3 SCC 300).

[7] We do not wish to set out the mundane cases and principles save to say in the recent decision on *Deutsche Bank (M) Bhd v MBf Holdings Bhd & Anor* [2015] 6 MLJ 310 the Federal Court has substantially dealt with some of the relevant principles in this one point of law, limited to the facts of that case.

BRIEF FACTS

[8] The first defendant is the registered proprietor of Lots 261 and 260. Lot 261 had been leased to the first plaintiff. Before the termination of the lease, the first plaintiff gave a proposal to purchase the said Lot 261. The first defendant turned it down and after various negotiations between the parties, it was the first defendant who offered to lease the said Lot 261 to the first appellant for a period of 30 years, as per the lease agreement and faxed to the first plaintiff on or about 4 April 2012 even setting out the date when the lease was to commence. The commencement date for the lease was 1 January 2013.

[9] We have perused the draft lase agreement and we are satisfied that all the essential terms which are required to conclude an enforceable agreement has been dealt with by the parties. Subsequent to the sending of the proposed draft lease agreement, there was an exchange of correspondence between the parties to deal with an issue relating to acquisition of the property by state authorities and the manner in which compensation was to be agreed. This, as far as the lease agreement is concerned, is a non-essential term but learned counsel says it's a counter offer and in consequence it destroys the offer given by the first defendant in toto.

[10] In addition, learned counsel says, during the said period the first defendant had offered the lease to Lot 260 to the first plaintiff and there were some negotiations in respect of Lot 260 between the parties. However, at no point of time had the first defendant withdrawn the offer for Lot 261, (i) or had informed the first appellant/plaintiff that the approval of the first respondent was necessary; (ii) the approval of the Ministry of Finance was necessary; (iii) the first defendant board had rejected the 30 years lease.

[11] We have, during the course of trial, enquired whether there was any statutory requirement to get the approval of relevant authorities. Both counsel were frank to say that there was none and the first defendant was empowered in law to lease the said Lot 261. As the draft lease agreement had not been revoked, the first defendant by a letter dated 10 September 2012 by the plaintiff has much significance in relation to consensus ad idem. The said letter reads as follows:

10 September 2012

Messrs Mazlan & Associates

Advocates& Solicitors

Suite 8.1, Level 8, Work@Clearwater

Changkat Semantan

Off Jalan Semantan

Damansara Heights

50490 Kuala Lumpur.

Attn: Ms. Rosalind Lim

Dear Sirs,

Draft Lease Agreement between Lembaga Getah Malaysia ('LGM')

& Sayfol International School ('Sayfol')

We refer to your email of 17.7.2012.

Our clients have taken note of all the comments forwarded by your clients in the draft agreement and agreeable with the same.

In regards to item No. 1, Kindly note that our clients will enter the lease via Sayfol International Education Group Berhad, a company incorporated under the Company's Act 1965. Enclosed herewith the Form 8 together with Form 49 for your perusal.

Kindly revert to us on the. issue of compulsory acquisition. Apart from the above, our clients are agreeable with the terms and conditions stated in the revised draft lease agreement.

Kindly revert with your clients instruction on item 8 (Clause 19) compulsory acquisition.

Thank you.

Yours faithfully,

Sgd.

c.c. - Sayfol Intemational School

Attn: Dato Seri Dr Haji Ghulam Mohd Sayeed / Datin Sen Hajjah Sarah Sayeed Majangah.

[12] In our view, learned counsel for the first defendant's argument that the negotiation in respect of the acquisition, and leasing of Lot 260 as well as the entering of the tenancy agreement for a period of one year between the first plaintiff and the first defendant to allow them to stay in Lot 261 after the expiry of the current lease, cumulatively tantamount to a counter offer which has revoked the offer to lease Lot 261, is too simplistic in nature.

[13] The draft lease agreement was not an offer simpliciter which can be revoked by a counter offer based on well-established cases. In the instant case, the parties have moved far away from the 'offer' simpliciter and have negotiated the terms of the agreement. It has gone to an advanced stage by clear intention

to do so by informing the first plaintiff and setting out the grounds where applicable to give time frame to accept or reject the proposed lease agreement. The lease agreement here stands in the nature of an open contract.

[14] Learned author of *The Modern Law of Real Property*, Dr Geoffrey Cheshire in the 10th Ed of his work, described an open contract as follows:

> If a contract for sale specifies merely the names of the parties, a description of the property and a statement of the price, it is called an open contract. When this form of contract is made, the parties are bound by certain obligations implied by the law.

[15] In the instant case, the learned trial judge had set out the facts in great detail but in our view, has not applied the law to the facts and did not undertake a balancing exercise to lean in favour of the first appellant to uphold the bargain. The judgment of the learned trial judge read as follows:

> Based on the grounds above I find that the defendants clearly never agreed and did not accept the plaintiffs' proposal to lease Lot 261 for a period of 30 years.
>
> The first defendant's board of directors and also the Ministry of Finance did not approve the plaintiffs' proposal to lease Lot 261 for a 30 year term.
>
> The exchange of draft terms for the lease agreement between the plaintiffs' and the defendants' solicitors are clearly subject to comments and amendments by the defendants and the fundamental terms were never agreed by the defendants.
>
> The plaintiffs acts in respect of the 30 year lease are pursuant to the plaintiffs' own proposal, and the majority of such acts are unilaterally performed by the plaintiffs as part of their preparation to enter into the lease agreement despite the same still being in the process of negotiation.
>
> The defendants never agreed to a 30 year lease, despite the existence of discussions, negotiations and meetings between the plaintiffs and the defendant but the material and fundamental condition of the lease in respect of the 30 year term was never at any time agreed by the defendants. There was no consensus between both parties in respect of this 30 year lease.
>
> The defendants also made a counter offer for Lot 260 to the plaintiffs in lieu of Lot 261 during the meeting on 18 February 2013 and this counter offer was not agreed by the plaintiffs. The pplaintiffs rejected the counter offer from the Defendants and this marked the end of the legal relationship between them – see the *Mahabuilders* case.
>
> Based on all of the grounds hereinabove, I find that there was no 30 year lease agreement agreed and finalized between the plaintiffs and the defendants. Therefore there is no contract between the plaintiffs and the defendants for the lease agreement for the 30 year lease term.
>
> On the other hand, in respect of the defendants' counterclaim against the plaintiffs, I find that the tenancy agreement was renewed for one more year commencing on 1 December 2013.

In the circumstances, I find that the plaintiffs failed to prove their claim against defendants and the defendants have also failed to prove their counterclaim against the plaintiffs.

The defendants' counterclaim against the plaintiffs is also dismissed by the court. Both claims are dismissed without costs.

[16] We have read the memorandum of appeal, the record of appeal and the able submission of counsel. After giving much consideration to the submission of learned counsel for the first defendant, we take the view that the appeal must be allowed and specific performance of the lease agreement as prayed must be allowed. Our reasons, inter alia, are as follows:

(a) having considered the chronology of events and the contemporaneous documentary and oral evidence, there was in law and fact a valid and enforceable lease agreement for Lot 261 and the contract prima facie was concluded by the first defendant in the letter dated 10 September 2012 which we have set out earlier;

(b) on the facts of the case, this is not a simple case of offer and acceptance as submitted by the learned counsel for the first respondent. It has moved to an advanced stage fit for execution. The parties had reached consensus ad idem well before 4 April 2013;

(c) in view of the existence of a valid and enforceable lease agreement and the acceptance thereof, the unilateral act of the first respondent seeking to withdraw from the lease agreement amounts to a breach of its obligations; and

(d) it is a fit and proper case to order specific performance of the lease agreement and for this purpose grant prayers (a) and (c) of para 48 of the statement of claim.

[17] For the reasons stated above, we allow the appeal with costs of RM15,000. Deposit to be refunded.

[18] We have taken note that the first defendant has instruction to appeal on this decision to the Federal Court, and have requested a stay of this judgment pending leave to appeal on the undertaking that they will maintain the status quo of the parties. The first appellant has no objection to the stay based on the first defendant's undertaking. In consequence, a stay of this judgment is granted pending leave to appeal to the Federal Court.

We hereby ordered so.

Appeal allowed with costs of RM15,000.

Reported by Dzulqarnain Ab Fatar